

PT 98-30

Tax Type: **PROPERTY TAX**

Issue: **Government Ownership/Use**

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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RICHMOND TOWNSHIP	)	Docket # 96-56-53	
FIRE PROTECTION DISTRICT	)	Docket # 96-56-54	
Applicant	)		
	)	Parcel Index #	04-09-383-004-0060
v.	)	Parcel Index #	04-09-452-001 -0060
	)		
THE DEPARTMENT OF REVENUE	)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS	)	Administrative Law Judge	

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RECOMMENDATION FOR DISPOSITION

SYNOPSIS:

THIS MATTER COMES ON TO DETERMINE WHETHER OR NOT MCHENRY COUNTY PARCEL INDEX NOS. 04-09-383-004-0060 AND 04-09-452-001-0060 QUALIFIED FOR A PROPERTY TAX EXEMPTION DURING THE 1996 ASSESSMENT YEAR.

THE RICHMOND TOWNSHIP FIRE PROTECTION DISTRICT (HEREINAFTER REFERRED TO AS THE "APPLICANT"), NOTIFIED THE ILLINOIS DEPARTMENT OF REVENUE (HEREINAFTER REFERRED TO AS THE "DEPARTMENT") IN WRITING THAT IT WAIVED ITS PETITION FOR A FORMAL HEARING. THE APPLICANT REQUESTED THAT THIS MATTER BE DECIDED AS AN OFFICE DISPOSITION BASED UPON A BRIEF SUBMITTED BY THE APPLICANT'S ATTORNEY.

THE ISSUES IN THIS MATTER INCLUDE, FIRST, WHETHER THE APPLICANT WAS THE OWNER OF THE PARCEL DURING THE 1996 ASSESSMENT YEAR; SECONDLY, WHETHER THE APPLICANT IS A FIRE PROTECTION DISTRICT; AND LASTLY, WHETHER THE APPLICANT QUALIFIED FOR A PROPERTY EXEMPTION FOR THE PARCELS AT ISSUE FOR THE 1996 ASSESSMENT YEAR. FOLLOWING THE SUBMISSION OF ALL THE EVIDENCE AND A REVIEW OF

THE RECORD, IT IS DETERMINED THAT THE APPLICANT DID NOT OWN THE SUBJECT PARCEL DURING THE 1996 ASSESSMENT YEAR. IT IS ALSO DETERMINED THAT THE APPLICANT IS A FIRE PROTECTION DISTRICT. FINALLY, IT IS DETERMINED THAT THE APPLICANT DID NOT QUALIFY FOR A PROPERTY TAX EXEMPTION FOR THE PARCELS IN QUESTION FOR THE 1996 ASSESSMENT YEAR.

FINDINGS OF FACT:

1. ON NOVEMBER 6, 1996, THE DEPARTMENT RECEIVED A PROPERTY TAX EXEMPTION APPLICATION FROM THE MCHENRY COUNTY BOARD OF REVIEW FOR PERMANENT PARCEL INDEX NUMBER 04-09-383-004-0060. THE APPLICANT HAD SUBMITTED THE REQUEST, AND THE BOARD RECOMMENDED THAT THE DEPARTMENT GRANT THE EXEMPTION FOR THE ENTIRE 1996 ASSESSMENT YEAR. THE DEPARTMENT ASSIGNED DOCKET NO. 96-56-53 TO THE APPLICATION.

2. ON NOVEMBER 6, 1996, THE DEPARTMENT RECEIVED A PROPERTY TAX EXEMPTION APPLICATION FROM THE MCHENRY COUNTY BOARD OF REVIEW FOR PERMANENT PARCEL INDEX NUMBER 04-09-452-001-0060. THE APPLICANT HAD SUBMITTED THE REQUEST, AND THE BOARD RECOMMENDED A FULL YEAR EXEMPTION FOR THE 1996 ASSESSMENT YEAR. THE DEPARTMENT ASSIGNED DOCKET NO. 96-56-54 TO THE APPLICATION.

3. ON NOVEMBER 8, 1996, THE DEPARTMENT DENIED THE TWO REQUESTED EXEMPTION APPLICATIONS, FINDING THAT THE APPLICANT WAS NOT THE OWNER OF THE PROPERTIES.

4. ON NOVEMBER 27, 1996, THE APPLICANT TIMELY PROTESTED THE DENIAL OF THE EXEMPTIONS AND REQUESTED A HEARING IN THE MATTER.

5. A TELEPHONIC PRE-TRIAL CONFERENCE WAS HELD ON JUNE 24, 1997. AT THE PRE-TRIAL CONFERENCE, THE APPLICANT VERBALLY REQUESTED THAT THE MATTER BE HANDLED AS AN OFFICE DISPOSITION AND REQUESTED THAT THEY BE ALLOWED TO SUBMIT A

BRIEF. PURSUANT TO THE CONFERENCE, AN ORDER WAS ENTERED SETTING A BRIEFING SCHEDULE.

6. ON AUGUST 11, 1997, THE APPLICANT SUBMITTED A BRIEF TO THE DEPARTMENT.

7. ON OCTOBER 22, 1997, THE APPLICANT, IN WRITING, WITHDREW THE PETITION FOR A FORMAL HEARING AND REQUESTED THAT THE MATTER BE HANDLED AS AN OFFICE DISPOSITION.

8. ON MAY 5, 1995, THE APPLICANT CONVEYED THE TWO PARCELS IN QUESTION TO RARE EARTH, LTD. BY A WARRANTY DEED.

9. ON APRIL 28, 1995, THE APPLICANT ENTERED INTO AN INDUSTRIAL BUILDING LEASE WITH RARE EARTH, LTD. FOR THE PROPERTIES LOCATED AT 5513 GEORGE STREET AND 10217 MAIN ST., RICHMOND, ILLINOIS, THE SUBJECT PARCELS.

10. THE TERMS OF THE LEASE STATE THAT THE APPLICANT IS NOT REQUIRED TO PAY MONETARY RENT TO THE LESSOR FOR THE PERIOD COMMENCING MAY 1, 1995 THROUGH APRIL 30, 1997. THE APPLICANT, AS LESSEE HOWEVER IS OBLIGATED FOR THE REAL ESTATE TAXES, FIRE AND LIABILITY INSURANCE, AND THE INTERIOR AND EXTERIOR MAINTENANCE. AFTER APRIL 30, 1997, THE APPLICANT HAS AN OPTION TO RENT THE SUBJECT PROPERTIES FOR MONETARY AMOUNTS THAT INCREASE EVERY SIX MONTHS.

#### CONCLUSIONS OF LAW:

ARTICLE IX, §6 OF THE ILLINOIS CONSTITUTION OF 1970, PROVIDES IN PART AS FOLLOWS:

THE GENERAL ASSEMBLY BY LAW MAY EXEMPT FROM TAXATION ONLY THE PROPERTY OF THE STATE, UNITS OF LOCAL GOVERNMENT AND SCHOOL DISTRICTS AND PROPERTY USED EXCLUSIVELY FOR AGRICULTURAL AND HORTICULTURAL SOCIETIES, AND FOR SCHOOL, RELIGIOUS, CEMETERY AND CHARITABLE PURPOSES.

THIS PROVISION IS NOT SELF-EXECUTING BUT MERELY AUTHORIZES THE GENERAL ASSEMBLY TO ENACT LEGISLATION THAT EXEMPTS PROPERTY WITHIN THE CONSTITUTIONAL LIMITATIONS IMPOSED. CITY OF CHICAGO V. ILLINOIS DEPARTMENT OF REVENUE, 147 ILL.2D 484 (1992)

PURSUANT TO THE CONSTITUTIONAL ENABLING PROVISION, THE LEGISLATURE HAS ENACTED EXEMPTION STATUTES FOR FIRE PROTECTION PURPOSES. IN PARTICULAR, UNDER 35 ILCS 200/15-60, THE SECTION REGARDING PROPERTY OWNED AND USED BY A TAXING DISTRICT, IF SUCH PROPERTY IS OWNED BY THE TAXING DISTRICT AND USED FOR FIRE DEPARTMENT AND RELATED PURPOSES, SUCH PROPERTY MAY BE GRANTED AN EXEMPTION.

ANOTHER STATUTE UNDER WHICH FIRE DEPARTMENTS HAVE QUALIFIED FOR A PROPERTY TAX EXEMPTION IS FOUND AT 35 ILCS 200/15-65. THIS IS THE EXEMPTION SECTION FOR CHARITABLE ORGANIZATIONS. IF, FOR EXAMPLE, A VOLUNTEER FIRE DEPARTMENT OWNS PROPERTY AND THE OWNERSHIP AND USE OF THE PROPERTY MEET THE CRITERIA ESTABLISHED FOR A CHARITABLE EXEMPTION, THE DEPARTMENT MAY GRANT AN EXEMPTION UNDER THIS STATUTORY PROVISION.

A THIRD STATUTE THAT MAY BE USED BY A FIRE DEPARTMENT FOR A REQUESTED EXEMPTION IS FOUND AT 35 ILCS 200/15-70 WHICH IS ENTITLED "FIRE PROTECTION PURPOSES." IF AN APPLICANT CAN PROVE THAT THEY FULFILL THE PROVISIONS SPECIFIED IN THIS STATUTORY PROVISION, THE DEPARTMENT WILL GRANT THE EXEMPTION TO THE CITY, VILLAGE, INCORPORATED TOWN, ASSOCIATION, OR CORPORATION THAT FULFILLS THE OBLIGATIONS ENUMERATED IN THIS STATUTORY SECTION.

THE APPLICANT IS AN ORGANIZATION, THE TYPE OF WHICH WAS CREATED BY THE GENERAL ASSEMBLY. THE STATUTORY PROVISIONS REGARDING THE CREATION OF FIRE PROTECTION DISTRICTS IS FOUND AT 70 ILCS 705/0.01 ET SEQ. AS A FIRE PROTECTION DISTRICT, THE APPLICANT MAY ONLY QUALIFY FOR A PROPERTY TAX EXEMPTION PURSUANT TO THE EXEMPTIONS GRANTED TO MUNICIPAL CORPORATIONS. THE FOLLOWING LANGUAGE IS

FOUND AT 70 ILCS 705/1, THE "CREATION AUTHORIZED" SECTION OF THE FIRE PROTECTION DISTRICT ACT:

IT IS HEREBY DECLARED AS A MATTER OF LEGISLATIVE DETERMINATION THAT IN ORDER TO PROMOTE AND PROTECT THE HEALTH, SAFETY, WELFARE AND CONVENIENCE OF THE PUBLIC, IT IS NECESSARY IN THE PUBLIC INTEREST TO PROVIDE FOR THE CREATION OF MUNICIPAL CORPORATIONS KNOWN AS FIRE PROTECTION DISTRICTS AND TO CONFER UPON AND VEST IN THE FIRE PROTECTION DISTRICTS ALL POWERS NECESSARY OR APPROPRIATE IN ORDER THAT THEY MAY ENGAGE IN THE ACQUISITION, ESTABLISHMENT, MAINTENANCE AND OPERATION OF FIRE STATIONS, FACILITIES, VEHICLES, APPARATUS AND EQUIPMENT FOR THE PREVENTION AND CONTROL OF FIRE THEREIN AND . . . AND THAT THE POWERS HEREIN CONFERRED UPON SUCH FIRE PROTECTION DISTRICTS ARE PUBLIC OBJECTS AND GOVERNMENTAL FUNCTIONS IN THE PUBLIC INTEREST.

THEREFORE, THE APPLICABLE PROVISION OF THE PROPERTY TAX EXEMPTION STATUTES IS FOUND AT 35 ILCS 200/15-75 ENTITLED "MUNICIPAL CORPORATIONS", THE FOURTH PROVISION UNDER WHICH THE DEPARTMENT HAS GRANTED FIRE DEPARTMENTS AN EXEMPTION. THE STATUTORY PROVISION IS AS FOLLOWS:

ALL MARKET HOUSES, PUBLIC SQUARES AND OTHER PUBLIC GROUNDS OWNED BY A MUNICIPAL CORPORATION AND USED EXCLUSIVELY FOR PUBLIC PURPOSES ARE EXEMPT.

THIS STATUTE REQUIRES THAT THE MUNICIPAL CORPORATION OWN THE PROPERTY. THE APPLICANT IS NOT THE OWNER OF THE PROPERTY AT ISSUE.

THE ARGUMENT OF THE APPLICANT IS THAT BECAUSE THERE HAS BEEN NO CHANGE IN THE USE OF THE PROPERTY, AND BECAUSE THE APPLICANT IS NOT OBLIGATED TO PAY MONETARY RENT FOR THE PROPERTY, THAT THE PROPERTY SHOULD QUALIFY FOR A PROPERTY TAX EXEMPTION.

THE DEPARTMENT HAS HELD, AND THE COURT UPHELD, A DENIAL OF AN EXEMPTION FOR A BUILDING TO BE USED AS A FEDERAL OFFICE BUILDING WHEREIN THE AGREEMENT BETWEEN THE CONTRACTOR AND THE FEDERAL GOVERNMENT WAS A LEASE AND NOT AN INSTALLMENT PURCHASE CONTRACT. U.S. V. HYNES, 20 F.3D 1437 (1994). AT 35 ILCS

200/15-80 IS FOUND AN EXEMPTION FOR PROPERTY THAT IS BEING PURCHASED BY A GOVERNMENTAL BODY UNDER AN INSTALLMENT PURCHASE CONTRACT.

IN THE CASE AT ISSUE, THERE WAS NO INSTALLMENT CONTRACT BETWEEN THE APPLICANT AS THE PURCHASER AND RARE EARTH, AS THE SELLER. RATHER, THERE WAS A LEASE BETWEEN RARE EARTH, LTD. AS THE OWNER AND THE APPLICANT AS THE LESSEE.

THE APPLICANT'S BRIEF ASSERTS THAT THE PROPER STATUTORY PROVISION AT ISSUE IS THE LANGUAGE FOUND AT 35 ILCS 200/15-10, WHICH STATES:

§ 15-10. EXEMPT PROPERTY; PROCEDURES FOR CERTIFICATION. ALL PROPERTY DESCRIBED IN THE SECTIONS FOLLOWING SECTION 15-30 AND PRECEDING SECTION 16-5, TO THE EXTENT THEREIN LIMITED, IS EXEMPT FROM TAXATION. HOWEVER, IT IS THE DUTY OF THE TITLEHOLDER OR THE OWNER OF THE BENEFICIAL INTEREST OF ANY PROPERTY THAT IS EXEMPT, EXCEPT . . . TO FILE WITH THE CHIEF COUNTY ASSESSMENT OFFICER, ON OR BEFORE JANUARY 31, OF EACH YEAR . . . AN AFFIDAVIT STATING WHETHER THERE HAS BEEN ANY CHANGE IN THE OWNERSHIP OR USE OF THE PROPERTY OR THE STATUS OF THE OWNER-RESIDENT, . . . . THE NATURE OF ANY CHANGE SHALL BE STATED IN THE AFFIDAVIT. FAILURE TO FILE AN AFFIDAVIT SHALL, IN THE DISCRETION OF THE ASSESSMENT OFFICER, CONSTITUTE CAUSE TO TERMINATE THE EXEMPTION OF THAT PROPERTY NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CODE.

SOME OF THE STATUTES THAT GRANT EXEMPTIONS ARE FOUND IN SECTIONS 15-30 TO SECTION 16-5, AS STATED ABOVE. HOWEVER, SECTION 35 ILCS 200/10 AND THE FOLLOWING SECTIONS, 35 ILCS 200/15-15, AND 35 ILCS 200/15-20 ARE NOT STATUTES THAT GRANT EXEMPTIONS. RATHER THESE STATUTORY PROVISIONS EXPLAIN THE YEARLY PROCEDURES FOR AN APPLICANT TO FOLLOW WHEN THEY HAVE ACQUIRED AN EXEMPTION. THE PROVISIONS ALSO ADDRESS THE OBLIGATIONS THAT AN OWNER OF EXEMPT PROPERTY MUST FOLLOW WHEN THERE HAS BEEN A LEASE ON THE PROPERTY OR WHEN THERE HAS BEEN A CHANGE IN THE USE OR OWNERSHIP OF THE PROPERTY. THE APPLICANT OBVIOUSLY WAS AWARE OF THESE PROVISIONS, BECAUSE HE PROPERLY FILED A NEW EXEMPTION APPLICATION ON THE SUBJECT PARCELS BECAUSE THERE WAS A CHANGE IN OWNERSHIP.

THE APPLICANT'S BRIEF CITES CHICAGO PATROLMEN'S ASSOCIATION V. THE DEPARTMENT OF REVENUE, 171 ILL.2D 263 (1996) IN SUPPORT OF ITS ASSERTION THAT THE

REALITIES OF OWNERSHIP ARE IN THE APPLICANT IN THIS CASE. CHICAGO PATROLMEN'S ASSOCIATION CONCERNED A CHARITABLE MUSEUM AND A NON-CHARITABLE POLICE ORGANIZATION, EACH OF WHICH OWNED AN UNDIVIDED ONE-HALF INTEREST IN THE PROPERTY. THE COURT FOUND THAT FIFTY PERCENT OF THE PROPERTY WAS EXEMPT AND FIFTY PERCENT WAS TAXABLE. THE CASE BEFORE ME DOES NOT CONCERN A CHARITABLE ORGANIZATION AND A NON-CHARITABLE ORGANIZATION AS CO-OWNERS OF PROPERTY. I THEREFORE FIND CHICAGO PATROLMEN'S ASSOCIATION IS DISTINGUISHABLE FROM THE FACTS BEFORE ME.

IT IS RECOMMENDED THAT MCHENRY COUNTY PARCEL INDEX NOS. 04-09-452-001-0060 AND 04-09-383-004-0060 REMAIN ON THE TAX ROLLS FOR THE 1996 ASSESSMENT YEAR AND BE ASSESSED TO RARE EARTH, LTD., THE OWNER DURING THE TAXABLE YEAR IN QUESTION. PURSUANT TO THE TERMS OF THE LEASE, HOWEVER, IT APPEARS THAT THE APPLICANT IS RESPONSIBLE FOR THE PAYMENT OF SAID TAXES.

RESPECTFULLY SUBMITTED,

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BARBARA S. ROWE  
ADMINISTRATIVE LAW JUDGE

MARCH 30, 1998